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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights defenders

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report submitted by the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, in accordance with General Assembly resolution 60/161.

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Report of the Special Representative of the Secretary-General on human rights defenders

Summary

This report focuses on the right to protest in the context of freedom of assembly. It builds upon and deepens interrelated issues addressed in previous reports of the Special Representative, particularly her report to the General Assembly at its sixty-first session (A/61/312), which focused on the right to freedom of assembly in relation to activities of human rights defenders.

The introductory part of the report suggests approaches to unpack the elements of the right to protest and clarifies that the Special Representative looks at the right to protest mainly from the protection aspect, in accordance with her overarching function of protecting defenders and their right to defend human rights.

In the first part of the report she analyses the legal framework for the protection of the right to protest at the international and regional levels as well as the case law and the work of monitoring mechanisms. This part of the report illustrates cases presented to both international and regional mechanisms and shows how the different systems complement and reinforce each other.

The second part of the report analyses the work of the Special Representative in this area, particularly her protection role exercised through the communications procedure. In order to give prominence to the protest element of the analysis, the information is organized on the basis of: (a) "groups of protestors", i.e. women defenders, student activists, trade unionists and defenders working on the rights of lesbian, gay, transgender and bisexual persons; and (b) "thematic areas" of protest, i.e. the anti-globalization movement, demonstrations linked to elections, peace demonstrations and protests linked to land rights and environmental claims. The analysis also highlights the role of human rights monitors and journalists in documenting demonstrations and the risks and violations they face.

The use of these categories allows, on the one hand, capturing major worldwide trends in present-day protests and, on the other hand, paves the way for the identification of specific protection gaps addressed by the Special Representative in her conclusions and recommendations.

The Special Representative states that the right to protest is a fully fledged right, which entails the enjoyment of a set of rights internationally recognized and reiterated in the Declaration on Human Rights Defenders. These rights include freedom of expression and opinion, freedom of association, freedom of peaceful assembly and trade union rights, including the right to strike.

Complying with the right to protest in the context of freedom of assembly entails both the negative obligation of refraining from interfering with peaceful protests and the positive obligation of protecting rights holders, including human rights defenders, in the exercise of their right to protest.

The Special Representative argues that in addition to these obligations, respecting and fulfilling the right to protest entails the obligation on the part of States to take deliberate, concrete and targeted steps to build, maintain and strengthen pluralism, tolerance and an open attitude to the expression of dissent in society.

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I. Introduction

1. The present report is the seventh annual report submitted to the General Assembly by the Special Representative of the Secretary-General on the situation of human rights defenders. It is submitted pursuant to General Assembly resolution 60/161.

2. This report focuses on the right to protest in the context of freedom of assembly. The analysis and information contained in the present document take stock of, build upon and deepen interrelated issues addressed in previous reports of the Special Representative, particularly the report to the General Assembly at its sixty-first session (A/61/312), which focused on the right to freedom of assembly in relation to activities of human rights defenders.

3. The Special Representative thanks the organizations that submitted documents and information on the subject of this report, namely the American Civil Liberties Union (ACLU), Amnesty International, Human Rights First, the International Federation for Human Rights (FIDH) and the Office of the Commissioner for Human Rights of the Council of Europe.

4. Historically, protests and demonstrations have been the engines of change and major contributing factors to advances in human rights. Unknown defenders as well as activists of high calibre have led and inspired protest movements in all regions and historical epochs, paving the way to achievements in human rights. From the civil disobedience as a form of non-violent protest championed by Mahatma Gandhi to claim the right of the people of India to self-determination, to the march on Washington, D.C., demanding the end of racial segregation in the United States led by Martin Luther King, Jr., to the Mothers of the Plaza de Mayo taking their Thursday afternoon walk in the Buenos Aires square with their white scarves to denounce the crimes of the dictatorship in Argentina, to demonstrations for workers' rights on 1 May, the protests of human rights defenders all over the world have been high-water marks of history.

5. As the Special Representative noted in her last report, "The right to protest is an essential element of the right to participation in any democratic dispensation". This is echoed in the European Union Guidelines on Human Rights Defenders: "The work of human rights defenders often involves criticism of government's policies and actions. However, governments should not see this as negative. The principle of allowing room for independence of mind and free debate on a government's policies and actions is fundamental, and is a tried and tested way of establishing a better level of protection of human rights".[1]

6. While reiterating the principled positions of (a) acknowledging protests in the context of freedom of peaceful assembly as a fully fledged right to be respected, protected, promoted and fulfilled; and (b) considering this right as an essential and constituent element of democracies, the right to protest in relation to activities of human rights defenders can be analysed from different aspects.

7. The "promotion" aspect shows how the exercise of the right to protest by defenders furthers the promotion and protection of human rights. The analysis from

[1] Adopted by the Council of the European Union in June 2004, para. 5. Available at ec.europa.eu/external_relations/human_rights/guidelines/index.htm.

this perspective looks at elements such as: (a) the visibility and momentum of human rights concerns that protests generate; (b) the sensitization of public opinion as well as changes in public opinion brought about by protests; (c) the role of media in amplifying the voice of protestors and in spreading their slogans; (d) the participation of different sectors of society in protests; (e) the potential to accelerate change and reform processes triggered by protests; (f) the successes of protestors in achieving their objectives in terms of changes in legislation, policies, decisions, actions and attitudes; (g) the corollary of actions, activities and processes that accompany demonstrations and are aimed at strengthening the impact of protests and capitalize on them.

8. The "protection" aspect looks at manifestations of actual or threatened violation of the right to protest affecting defenders engaged in demonstrations. It looks at: (a) the legal and institutional frameworks; (b) monitoring mechanisms to protect the right to protest; and (c) accountability processes to prosecute perpetrators, redress violations and prevent future ones.

9. Both approaches are needed to understand the right to protest in all its aspects. The two approaches complement each other and the distinction between the two serves the sole purpose of explaining the specific focus chosen by the Special Representative to deal with this subject.

10. The Commission on Human Rights, in resolution 2000/61 establishing the mandate of the Special Representative, assigned to this position an overarching protection function,[2] which is to be understood to include both the protection of defenders and the protection of their right to defend human rights. For this reason, while inevitably referring to some aspects of the right to protest linked to the promotion of this right and encouraging defenders, Governments and other stakeholders to fully explore this analytical approach and come up with good practices and lessons learned on the implementation and exercise of the right to protest, the present report focuses mainly on the protection elements of the right to protest.

11. The first section of this report analyses the legal framework to protect the right to protest at the international and regional levels as well as the case law and the work of monitoring mechanisms. The second section analyses the work of the Special Representative in this area, in particular her protection role exercised through the communications procedure. References to actions and positions taken by the Special Representative are also made in the first section of the report to show linkages between the work of the Special Representative and regional mechanisms.

II. Legal framework and monitoring mechanisms

A. The right to protest in international and regional instruments

12. The protection of the right to protest lies in the recognition and protection of a set of rights that includes freedom of expression and opinion, freedom of

[2] *Official Records of the Economic and Social Council, 2000, Supplement No. 3* (E/2000/23), chap. II, sect. A. Paragraph 3 establishes that the Special Representative "shall report on the situation of human rights defenders in all parts of the world and on possible means to enhance their protection in full compliance with the Declaration".

association, freedom of peaceful assembly and trade union rights, including the right to strike.

13. This section complements and is to be read in conjunction with the analysis of the legal framework on freedom of assembly contained in paragraphs 76 to 91 of document A/61/312.

14. The right to freedom of peaceful assembly is recognized in several international and regional instruments of binding and non-binding nature,[3] as is the right to freedom of expression.[4]

15. Article 8 of the International Covenant on Economic, Social and Cultural Rights recognizes the right to strike, the right to form and join trade unions and the right of trade unions to function freely. Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe recognizes the right to join trade unions.

16. The right to strike is considered an intrinsic corollary of the right to organize protected by the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) of the International Labour Organization. It derives from the right of workers' organizations to formulate their programmes of activity to further and defend the economic and social interests of their members.

17. The right to strike is also recognized in regional instruments, including the Inter-American Charter of Social Guarantees of 1948 (art. 27), the European Social Charter of 1961 (art. 6 (4)) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 (art. 8 (1) (b)).

B. Monitoring freedom of assembly at the international level

18. The monitoring of the implementation of the right to freedom of peaceful assembly as established in international instruments through the reporting system of treaty bodies has been carried out mainly by the Human Rights Committee and to a

[3] At the international level: (a) article 21 of the International Covenant on Civil and Political Rights; (b) article 5 (d) (ix) of the International Convention on the Elimination of All Forms of Racial Discrimination; (c) article 15 of the Convention on the Rights of the Child; (d) article 20 (1) of the Universal Declaration of Human Rights; (e) article 5 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, known as the Declaration on Human Rights Defenders.

At the regional level: (a) article 11 of the African Charter on Human and Peoples' Rights; (b) article 15 of the American Convention on Human Rights; (c) article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe.

[4] At the international level: (a) article 19 of the International Covenant on Civil and Political Rights; (b) article 5 (d) of the International Convention on the Elimination of All Forms of Racial Discrimination; (c) article 12 of the Convention on the Rights of the Child; (d) article 13 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; (e) articles 7 and 21 of the Convention on the Rights of Persons with Disabilities; (f) article 19 of the Universal Declaration of Human Rights; (g) article 6 (b) and (c) of the Declaration on Human Rights Defenders.

At the regional level: (a) article 9 of the African Charter on Human and Peoples' Rights; (b) article 13 of the American Convention on Human Rights; (c) article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe.

lesser extent by the Committee on the Rights of Child, which has encouraged States parties on a few occasions to facilitate the exercise by children of their right to freedom of expression, including their rights to freedom of association and of peaceful assembly, so that they can freely discuss, participate and express views and opinions on all matters affecting them. (See CRC/C/15/Add.252, para. 39 and CRC/C/15/Add.180, para. 34).

19. Problems identified in concluding observations of the Human Rights Committee on the implementation of the right to freedom of assembly resemble those analysed by the Special Representative in her last report to the General Assembly in the section reviewing her communications related to freedom of assembly (A/61/312, sect. III.A).

20. The implementation gaps with respect to freedom of assembly identified by the Human Rights Committee include: (a) bans on demonstrations; (b) unjustified restrictions on demonstrations; (c) unnecessary requirements to obtain authorizations that affect the enjoyment of freedom of assembly; (d) lack of remedies to appeal decisions denying the authorization to hold demonstrations; (e) arrest of protestors amounting to arbitrary detention; (f) legislation not complying with international human rights law both because it obstructs and punishes the exercise of freedom of assembly and the right to protest and because it establishes procedures infringing on the actual ability to enjoy the right to peaceful assembly; (g) legislation on counter-terrorism with definitions of "terrorism" so broad that they might jeopardize legitimate activities in a democratic society, in particular participation in public demonstrations.

21. In its decision in the case *Auli Kivenmaa v. Finland*,[5] the Human Rights Committee clarified that the requirement to pre-notify a demonstration can be compatible with the permitted limitations laid down in article 21 of the International Covenant on Civil and Political Rights provided that it is for reasons of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. In *Auli Kivenmaa v. Finland*, the Human Rights Committee considered that the gathering of several individuals at the site of a welcoming ceremony for a foreign head of State on an official visit cannot be regarded as a demonstration. Consequently, the application of Finnish legislation on demonstrations in such a case cannot be considered as an application of a restriction permitted by article 21 of the Covenant. In other words, the Human Rights Committee has held that restrictions may be imposed on public demonstrations as long as their purpose is to protect one of the interests listed in article 21.

C. The right to strike in the monitoring work of the Committee on Economic, Social and Cultural Rights

22. Concluding observations of the Committee on Economic, Social and Cultural Rights on the right to strike have identified implementation gaps related to legal frameworks not complying with international obligations, restrictions to the right to strike and bans or limitations of the right to strike for civil servants.

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[5] See *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40* (A/49/40), vol. II, annex IX, sect. N.

23. Inadequacies in the legal framework on the right to strike concern: (a) strikes considered to be criminal offences; (b) failure to incorporate the right to strike in domestic law; (c) legislation preventing workers from striking; (d) laws providing the possibility of replacing workers on strike; (e) unjustified exclusion from the right to strike of some categories of workers, such as public school teachers and college and university professors; (f) prohibition of strikes for all public employees and civil servants; (g) too-broad definitions of "essential services" affecting the right to strike of civil servants.

24. Other forms of restrictions of the right to strike range from acts of intimidation and sanctions against those exercising the right to strike to procedural requirements that make the exercise of the right to strike difficult.

D. Monitoring the right to protest at the regional level: jurisprudence and positions of regional mechanisms

1. African Commission on Human and Peoples' Rights

25. The African Commission on Human and Peoples' Rights has referred to public demonstrations in three cases.

26. In *Sir Dawda K. Jawara v. The Gambia*,[6] the complainant, a former Head of State of The Gambia, alleged that after the military coup that overthrew his Government, political parties were banned and that an independent Member of Parliament and his supporters were arrested for planning a peaceful demonstration. The African Commission stated that the banning of political parties constituted a violation of the freedom of assembly provided by article 11 of the African Charter.

27. In *Mouvement burkinabé des droits de l'homme et des peuples v. Burkina Faso*,[7] the complainant alleged that several human rights violations against members of the Burkinabé Movement occurred during student strikes and that a few individuals who were in the streets during the protests had died. The African Commission, despite the decision that the State had not violated the articles related to freedom of assembly and freedom of expression, deplored the abusive use of means of State violence against demonstrators even when demonstrations are not authorized by the competent administrative authorities. The Commission stated that public authorities must make an effort to cause only the barest minimum of damage and violation of physical integrity and to respect and preserve human life.

28. In *International Pen, Constitutional Rights Project, Interight on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organization v. Nigeria*,[8] the complainant argued that the hundreds of people, including the President of the Movement for the Survival of the Ogoni Peoples, who were arrested and put on trial for the murders of four Ogoni leaders on 21 May 1994 during a riot that broke out at a public meeting

[6] Decision of 11 May 2000, *Thirteenth Annual Activity Report of the African Commission on Human and Peoples' Rights 1999-2000* AHG/222(XXXVI), communication Nos. 147/95 and 149/96, available at www.achpr.org.

[7] *Fourteenth Annual Activity Report of the African Commission on Human and Peoples' Rights 2000-2001* AHG/229(XXXVII), communication No. 204/97, available at www.achpr.org.

[8] Decision of 31 October 1998, *First Annual Activity Report of the African Commission on Human and Peoples' Rights 1987-1988* AHG/215(XXXV), communication Nos. 137/94, 139/94, 154/96 and 161/97.

organized by the Movement had been convicted and sentenced to death for the peaceful expression of their views. The African Commission acknowledged that the victims had been disseminating information and opinions on the rights of the people who live on the oil-producing Ogoni lands through the rally organized by the Movement for the Survival of the Ogoni Peoples and that the State had violated articles 10 and 11 and, implicitly, article 9 of the African Charter.

29. The Special Rapporteur of the African Commission on human rights defenders in Africa, Reine Alapini-Gansou, has been taking public positions to protect defenders engaged in protests. A recent example is the press release issued on 18 June 2007 in which Ms. Alapini-Gansou expressed concern about alleged acts of violence and harassment against a number of members of Women of Zimbabwe Arise (WOZA) in the context of the peaceful and silent march they organized in Bulawayo on 6 June 2007 to launch their campaign "Ten steps to a new Zimbabwe". The march was violently dispersed by riot police; some women defenders were beaten, some arrested and later denied access to their lawyer.

30. The Special Representative has repeatedly intervened concerning allegations of harassment and human rights violations against women defenders belonging to this same Zimbabwean organization. Since 2003, she has sent six urgent appeals reporting allegations of violations that occurred during protests organized by WOZA.

31. While it is interesting to see how the action of the Special Representative of the Secretary-General and the Special Rapporteur of the African Commission complement each other in protecting defenders engaged in demonstrations, the Special Representative remains concerned about the situation of defenders in Zimbabwe, including women defenders, as the repeated communications and statements of both experts indicate a pattern of harassment of human rights defenders that has persisted over the last few years. The shadow report on Zimbabwe to the African Commission alleges that WOZA members have been arrested on more than 20 occasions between 2003 and 2007 for engaging in peaceful demonstrations.[9]

2. The right to protest in the inter-American human rights system

32. The Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights proposed guidelines on the interpretation of restrictions on public demonstrations in his annual report of 2005. The guidelines emphasize that public demonstration is a crucial social interest of democracies. The Special Rapporteur argues that the right of assembly and demonstration cannot be considered as synonymous with public disorder for the purpose of restricting it per se. He considers legislative and administrative regulations on public demonstrations and agrees with the position adopted by the Human Rights Committee in *Auli Kivenmaa v. Finland* on the requirement of prior notification. The Special Rapporteur in addressing the issue of the imposition of criminal sanctions in the context of demonstrations warns of the intimidating effect of

[9] WOZA members were arrested, for example, for demonstrating against increases in school fees; for praying in public; on International Women's Day; for handing out flowers on Valentine's day; for participating in a sponsored walk. See *Zimbabwe: human rights in crisis. Shadow report to the African Commission on Human and People's Rights*, May 2007, pp. 40-41.

criminalization. The guidelines conclude with considerations on the restrictions imposed by officers in the exercise of police power.[10]

33. The Inter-American Commission reiterated the principles of the guidelines in its 2006 report on the situation of human rights defenders in the Americas.[11] In its report, the Inter-American Commission underscored that political and social participation through public demonstration is critical to the consolidation of democratic life in societies. It underlined that such participation, as an exercise of freedom of expression and freedom of assembly, is a keen interest to society, which leaves the State very narrow margins for justifying restrictions on this right. The Inter-American Commission deems that States should establish administrative controls to ensure that in public protests and demonstrations force is used only in cases where it is necessary and that measures for planning, prevention and investigation of cases in which abuse of force may have occurred should be adopted.[12]

3. The right to protest in the European human rights system

34. The Office for Democratic Institutions and Human Rights (ODHIR) of the Organization for Security and Cooperation in Europe (OSCE) recently published *Guidelines on Freedom of Peaceful Assembly*[13] aimed at those responsible for drafting legislation, as well as those responsible for implementing such legislation and those affected by its implementation. The Guidelines put forward six guiding principles: (a) presumption in favour of holding assemblies; (b) the State's duty to protect peaceful assembly; (c) legality; (d) proportionality; (e) good administration; and (f) non-discrimination. The Guidelines include human rights defenders among the groups considered under the non-discrimination principle and recall article 5 of the Declaration on Human Rights Defenders.

35. The European Court of Human Rights of the Council of Europe has developed some jurisprudence on article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The following paragraphs give an account of the more significant judgements in this area.

36. In the case of *Plattform "Ärzte für das Leben" v. Austria*,[14] the applicant association had organized a demonstration against abortion. The police, while not refusing to provide protection to the demonstration, informed the organizers that it would be impossible to prevent counter-demonstrators from disrupting the march, which in fact occurred. A police presence separated the opposing groups and serious clashes were avoided, and the demonstration proceeded to its planned conclusion.

37. The European Court held that a demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without fearing that they will be

[10] Inter-American Commission on Human Rights, *Report of the Office of the Special Rapporteur for freedom of expression*, 2006, pp. 140-145.

[11] Inter-American Commission on Human Rights, *Report on the situation of human rights defenders in the Americas*, OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006, paras. 52-68.

[12] Ibid., para. 68.

[13] OSCE/ODHIR, *Guidelines on Freedom of Peaceful Assembly*, Warsaw, 2007. Available at www.osce.org/odihr/item_11_23835.html.

[14] Application No. 10126/82, judgement of 21 June 1988. This and subsequently cited cases are available on the HUDOC database of the European Court, at www.echr.coe.int.

subjected to physical violence by their opponents. Such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy, the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate.

38. The European Court further stated that the genuine, effective freedom of peaceful assembly cannot be reduced to a mere duty on the part of the State not to interfere. Compliance with the provision on freedom of peaceful assembly entails positive obligations. The Court further clarified that the positive obligation in the present case was an obligation as to measures to be taken and not to the results to be achieved. It therefore considered that the Austrian authorities had not failed to take reasonable and appropriate measures.

39. The European Court further developed its reasoning in *Öllinger v. Austria*,[15] in which the applicant, a Member of Parliament for the Green Party, notified the authorities that he would be holding a meeting of about six persons at the Salzburg cemetery to commemorate Jews killed during the Second World War by carrying commemorative messages. The meeting would coincide with a gathering of Comradership IV in memory of SS soldiers killed in the Second World War. The applicant was denied permission to hold his meeting.

40. The European Court considered that the case was about striking a fair balance between competing rights. It recalled that compliance with the provision on freedom of peaceful assembly entailed positive and negative obligations for the State. On the one hand, the State is compelled to abstain from interfering with the right to assembly, which also extends to a demonstration that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. If every probability of tension and heated exchange between opposing groups during a demonstration was to warrant its prohibition, society would be faced with being deprived of the opportunity of hearing differing views. On the other hand, the State may have to take positive measures to protect a lawful demonstration against counter-demonstrations.

41. The Court considered that in this case, the prohibition on holding the meeting was disproportionate to the aim pursued. The applicant expected only a small number of participants. They envisaged peaceful and silent means of expressing their opinion. The Court was not convinced by the Government's argument that allowing both meetings while taking preventive measures was not a viable alternative which would have preserved the applicant's freedom of assembly while at the same time offering a sufficient degree of protection as regards the rights of visitors to the cemetery. The Court found that by imposing an unconditional prohibition on the applicant's assembly, the authorities had given too little weight to the applicant's interest in holding the assembly and expressing his protest, and had therefore failed to strike a fair balance between competing interests.

42. In *Ezelin v. France*,[16] a number of independence movements and trade unions in Guadeloupe held a public demonstration to protest against court decisions whereby three militants were convicted for criminal damage to public buildings. In the course of the demonstration, public buildings were defaced. One of the

[15] Application No. 76900/01, judgement of 29 June 2006.

[16] Application No. 11800/85, judgement of 26 April 1991.

protesters, the applicant, carried a placard bearing his professional affiliation and was identified and arrested on that basis. The European Court found that there was in this instance an interference with the exercise of the applicant's freedom of peaceful assembly.

43. In *Oya Ataman v. Turkey*,[17] the European Court addressed the issue of pre-notification of demonstrations. In line with the position of the Human Rights Committee in the above-mentioned case *Auli Kivenmaa v. Finland* and with the opinion of the European Commission for Democracy through Law,[18] the Court held that establishing a regime of prior notification of peaceful assembly does not necessarily extend to an infringement of that right provided that the pre-notification requirement does not indirectly restrict the right to hold peaceful meetings.

44. In this case, the applicant, a member of the Turkish Human Rights Association (HRA), organized a march in a square of Istanbul to protest against plans for "F-type" prisons. The protest was dispersed by the police with the use of tear gas. The pre-notification requirement was not met and the European Court recognized the protest as unlawful. Nevertheless, the Court pointed out that an unlawful situation does not justify an infringement of freedom of assembly. In the view of the Court, there was no evidence to suggest that the gathering represented a danger to the public, apart from possibly disrupting traffic. In the Court's view, where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings. Accordingly, the Court considered that the forceful intervention by the police was disproportionate and was not necessary for the prevention of disorder.

45. It is interesting to note that the Special Representative has been intervening repeatedly with the Government of Turkey to bring to its attention allegations of various acts of harassment and human rights violations affecting members of HRA, including a very similar case to the one judged by the European Court in which a member of HRA was arrested during a demonstration and the premises of the organization raided by the police, allegedly in connection with the Association's campaign against F-type prisons (see E/CN.4/2002/106, para. 364). Between 2001 and 2003, the Special Representative sent eight communications concerning allegations of violations affecting defenders engaged in protests against F-type prisons.

46. In *Bączkowski and Others v. Poland*,[19] the applicants, members of non-governmental organizations (NGOs) active, inter alia, in the area of discrimination on the basis of sexual orientation, were denied permission to assemble. Nevertheless, the demonstrations were eventually held on the planned dates. However, the European Court noted that the assemblies were held without a presumption of legality, such a presumption constituting a vital aspect of effective and unhindered exercise of freedom of assembly. The Court observed that the refusals to give authorization could have had a chilling effect on the participants in

[17] Application No. 74552/01, judgement of 5 December 2006.

[18] The European Commission for Democracy through Law, better known as the Venice Commission, is the Council of Europe's advisory body on constitutional matters. Established in 1990, the Commission has played a leading role in the adoption of constitutions that conform to the standards of Europe's constitutional heritage. The Commission has become an internationally recognized independent legal think-tank.

[19] Application No. 1543/06, judgement of 3 May 2007.

the assemblies. The Court further stated that pluralism, tolerance and broadmindedness are particularly important in a democratic society. Democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position. The Court described the State as the ultimate guarantor of the principle of pluralism, a role that entails positive obligations to secure the effective enjoyment of rights. These obligations are of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimization.

47. Before the European Court issued its judgement on *Bączkowski and Others v. Poland*, in 2005 and 2006 the Special Representative sent three communications to the Government of Poland concerning the ban on the Equality March and the acts of harassment and threats against demonstrators claiming equal rights for lesbian, gay, bisexual and transgender persons (LGBT) in Poznan and to urge the Government to take adequate measures to ensure the protection of participants in the Equality March in Krakow (see E/CN.4/2006/95/Add.1, para. 432 and A/HRC/4/37/Add.1, paras. 560, 563, 564 and 566). The allegations of violence reported around the Equality March in Poznan confirm the position of the European Court that denying the authorization to march left protestors without protection and vulnerable to attacks and harassment by counter-protestors.

48. In 2006, the Special Representative addressed to the Governments of the Russian Federation and Latvia two communications on bans and acts of harassment against "pride parades" campaigning for LGBT rights (see A/HRC/4/37/Add.1, paras. 402, 403, 568 and 583).

49. These communications highlight a pattern of intolerance and violence in Eastern Europe against defenders working on LGBT rights. The Commissioner for Human Rights of the Council of Europe confirmed this trend in a viewpoint issued on 16 May 2007.[20] The Commissioner referred to bans on gay pride parades in Chisinau, Moscow, Tallinn and Riga. He urged stronger reactions against officials who take decisions against the law by banning demonstrations or politicians who use their positions to spread prejudices against people because of their sexual orientation. He also called on the authorities to treat organizations advocating for rights of LGBT persons with the same respect as they are expected to pay to other NGOs.

50. Concerned at this alarming pattern, the Congress of Local and Regional Authorities of the Council of Europe recently adopted recommendations on the need to protect the freedom of assembly and expression of LGBT persons.[21]

51. The Special Representative is encouraged to see some improvements in the efforts of the police to protect from the attacks and harassment of counter-protestors the LGBT parades that took place in May and June 2007 in Bucharest, Warsaw and Riga.[22] She is nevertheless concerned at bans, assaults and other forms of

[20] Available at www.coe.int/t/commissioner/Viewpoints/070516_en.asp.

[21] Recommendation 211 (2007) and resolution 230 (2007) on "Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons".

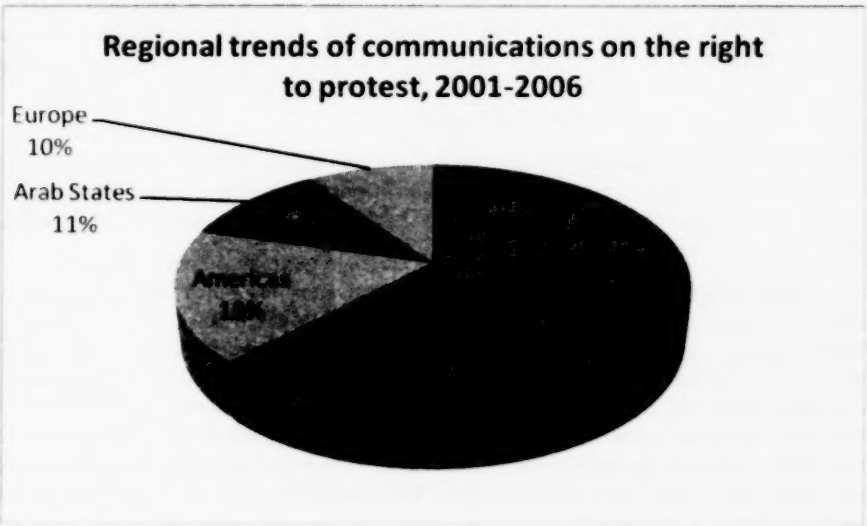
[22] Human Rights First, submission on the right to protest for the consideration of the Special Representative, July 2007.

intolerance that continued to take place in other Eastern European cities during the May/June 2007 LGBT parades.

III. Human rights defenders and the right to protest: interventions and positions of the Special Representative

A. Main trends

52. Between 2001 and 2006, approximately 200 (13 per cent) of the over 1,500 communications sent by the Special Representative dealt with the right to protest in the context of freedom of assembly. Communications on the right to protest were sent to 54 countries.[23] As shown in the following chart, most communications were sent to Asian countries, followed by African countries, countries in the Americas, Arab States and European countries.



53. The Special Representative reiterates the caveat made in previous reports that the number of cases brought to her attention from some countries may not always mirror the frequency of violations, nor can the lack or paucity of cases from other countries be considered as reflecting a satisfactory situation.

54. Most communications were sent jointly with the Special Rapporteur on freedom of opinion and expression. This shows how the right to protest entails both freedom of expression and freedom of assembly.

[23] Algeria, Argentina, Azerbaijan, Bahrain, Bangladesh, Belarus, Bolivia, Brazil, Cambodia, Chad, Chile, China, Colombia, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Ecuador, Egypt, Ethiopia, Gambia, Guatemala, Holy See, India, Indonesia, Iran (Islamic Republic of), Israel, Jamaica, Kenya, Kyrgyzstan, Latvia, Malaysia, Maldives, Mauritania, Mexico, Morocco, Myanmar, Nepal, Pakistan, Peru, Philippines, Poland, Republic of Korea, Russian Federation, Saudi Arabia, Sudan, Syrian Arab Republic, Thailand, Tunisia, Turkey, United States of America, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam and Zimbabwe.

55. Other special procedures mandate holders joined the communications of the Special Representative on protests, depending on: (a) the nature of the violations alleged (e.g. torture, summary executions, arbitrary detention, unfair trial, etc.); (b) the groups organizing protests (e.g. women, indigenous peoples); and (c) the thematic areas of protests (e.g. the independence of the judiciary, environmental claims linked to the right to food or adequate housing).

56. In addition to communications, the present analysis takes into account press releases and previous reports of the Special Representative, including reports on country visits.

57. While last year's report on freedom of assembly was based on the identification and analysis of categories of human rights violations suffered by defenders in the context of freedom of assembly, the present report gives prominence to the protest element by identifying: (a) "groups of protestors", i.e. women defenders, student activists, trade unionists and defenders working on LGBT rights; and (b) "thematic areas" of protest, i.e. the anti-globalization movement, demonstrations linked to elections, peace demonstrations and protests linked to land rights and environmental claims. The analysis also highlights the role of human rights monitors and journalists in documenting demonstrations and the risks and violations they face.

58. Communications on the right to protest have therefore been analysed on the basis of the above-mentioned categories, which enables the identification of major worldwide trends in present-day protests. Nevertheless, most communications concerning demonstrations refer to allegations of violations that occurred in the context of protests linked to the specific national situation that do not necessarily or entirely fall into the categories used for this analysis. These protests concerned issues such as: constitutional reform; the independence of the judiciary; the situation of refugees and internally displaced persons; children's rights; cases of torture; impunity; disappearances; solidarity with defenders being detained; and human rights celebrations.

B. Women defenders engaged in demonstrations

59. "Women defenders often face more risks when participating in collective public action because of perceptions of the traditional role of women in some societies, and they become targets of non-State actors", wrote the Special Representative in her last report (A/61/312, para. 72).

60. Since 2001, the Special Representative has sent 17 communications to nine countries[24] concerning cases of women defenders engaged in demonstrations. About a third of these communications (six) were sent to the Government on Zimbabwe concerning acts of harassment and violations affecting members of WOZA, referred to above.

61. The protests organized by women defenders referred to in these 17 communications concern both women defenders organized in groups and associations as women and engaged in demonstrations on broad human rights issues,

[24] Azerbaijan, Chad, Colombia, Indonesia, Iran (Islamic Republic of), Saudi Arabia, Turkey, Uzbekistan and Zimbabwe.

as well as women defenders protesting to demand change and progress in the protection and promotion of the human rights of women. A case in point is WOZA, whose members have been demonstrating both on women's rights (e.g. demonstration to mark International Women's Day) as well as on other human rights concerns.

62. Women defenders protested against issues such as police violence, the death penalty, torture, political reform and electoral fraud. Protests organized by women defenders on women's rights concerned (a) celebration of International Women's Day; (b) equal pay and equal treatment for women and men; (c) legislative changes to ensure equal rights and the removal of discriminatory clauses; and (d) slogans to call the attention of public opinion and decision makers to women's rights (e.g. "Give women their rights") (see A/HRC/4/37/Add.1, para. 586).

63. Violations suffered by women defenders as a consequence of their participation in protests ranged from threats following demonstrations to arrests and excessive use of force in repressing assemblies and marches. The Special Rapporteur on violence against women joined the Special Representative in about half of her communications on women defenders when the allegations indicated that women defenders were targeted because of their gender.

64. As the primary caretakers of children, women defenders often have to bring their infants and children with them to demonstrations. In some cases, the police arrested women defenders with their children and infants and detained them in inhumane conditions.[25]

65. About a fourth of the communications on women defenders concerned allegations of violations and harassment of women defenders in connection with demonstrations to celebrate International Women's Day on 8 March. It is an alarming indicator of how controversial women's rights still are in several countries around the world and of the level of intolerance of and violence against women defenders working on women's rights, even when their demonstrations take place in the framework of what is now widely perceived as a well-established and internationally recognized celebration.

66. Another example of mutual reinforcement of the protection and monitoring roles of regional mechanisms and the Special Representative was a communication to the Government of Colombia reporting threats against women defenders in connection with their activities to celebrate International Women's Day. In its reply to the communication, the Government reported that the Inter-American Commission on Human Rights was investigating the same events and had ordered precautionary measures for several women defenders (see E/CN.4/2002/106, paras. 68 and 118).

C. Students' protests

67. Since 2001, the Special Representative has sent 10 communications concerning student protests to six countries.[26] With the exception of the Islamic Republic of Iran and Malaysia, the countries concerned are in Africa. Three

[25] Human Rights First, op. cit.

[26] Gambia, Iran (Islamic Republic of), Kenya, Malaysia, Sudan and Zimbabwe.

communications were sent to the Sudan and three to Iran. Communications on student protests were sent in 2001, 2003 and 2004.

68. Student protests concerned both demonstrations related to their situation and rights as students, e.g. denial of the authorization to establish student unions and delays in receiving grants and loans, as well as broader human rights issues such as rallies against press laws limiting freedom of expression, protests denouncing cases of torture and rape, commemorations of human rights achievements, demonstrations seeking the release of political prisoners and the amendment of laws infringing the enjoyment of human rights.

69. Violations suffered by student activists linked to their participation in demonstrations included arrests, often resulting in incommunicado detention, and excessive use of force by the police. In the case of a demonstration organized by the Gambian Students Union on 10 and 11 April 2000, the excessive use of force resulted in the death of 14 demonstrators, including children (see E/CN.4/2004/94/Add.3, para. 175).

70. Acts of repression and retaliation against student activists engaged in protests have been particularly harsh. The fact that the Special Rapporteur on the question of torture joined the Special Representative in 9 out of the 10 communications she sent on student protests indicates the brutality of violations affecting student defenders. This is of even greater concern because of the young age of the students, who are sometimes under 18; their youth adds to the severity of the violations suffered. In addition, children and young students have less means than adults, including economic ones, to defend themselves as victims of human rights violations. For instance, students arrested during a demonstration in Kenya could not afford to pay the bail (see E/CN.4/2002/106, para. 227).

D. Defenders and workers' rights

71. The Special Representative sent 10 communications to eight countries[27] concerning protests related to rights at work. In the reports on her missions to Colombia and Nigeria, she thoroughly addressed the situation of trade unionists and labour activists. She remarked on the use of force by Colombian security forces in controlling labour protests and the abusive arrests of trade unionists by the police (see E/CN.4/2002/106/Add.2, para. 115). Her findings on the situation of trade unionists in Nigeria indicated that unionism is generally either discouraged or penalized with arrests, dismissals or demotions for participating in strikes. The right to picket and strike is limited by restrictive legislation which has a too-broad definition of categories of workers considered "essential", who are prohibited from engaging in strikes (see E/CN.4/2006/95/Add.2, paras. 66, 70 and 74).

72. Protests related to workers' rights referred to in communications of the Special Representative concerned issues such as: (a) campaigns for workers' rights; (b) promotion of basic labour standards; (c) peaceful assemblies in support of trade union members engaged in protests through hunger strikes; (d) strikes for wage increases; (e) protests against the violation of trade union rights; (f) demonstrations

[27] Algeria, Cambodia, Guatemala, Iran (Islamic Republic of), Mexico, Pakistan, Republic of Korea and Zimbabwe.

against human rights abuses connected to the economic crisis; (g) protests against the conditions of work; and (h) protests against bonded labour.

73. Most of the violations suffered by defenders engaged in protests over workers' rights occur during arrest, before, during or after demonstrations as well as a result of excessive use of force by the police, resulting in injuries to protestors and in one case in the death of a demonstrator (see A/HRC/4/37/Add.1, para. 435).

74. In addition to these violations, the communications of the Special Representative reported violations and forms of retaliation which specifically affected defenders protesting work-related issues, such as dismissal linked to participation in strikes and blacklisting of trade union members.

E. The anti-globalization movement: protests for social and economic rights

75. The protests at the World Trade Organization (WTO) Summit in Seattle, United States of America, in November 1998 brought to the attention of media and public opinion what has since been named the anti-globalization movement. It is made up of activists, trade unionists, environmentalists, lobbyists, farmers, feminists, anarchists and students demonstrating against a broad range of issues simplistically associated with globalization, such as growing multinational corporate power, global agreements on economic growth, social insecurity of workers, bioengineering of agricultural crops, violations of animal rights and collusion with oppressive regimes.

76. The anti-globalization movement has been described, for instance, as multigenerational, multi-class and multi-issue. This diversity also applies to the tone and nature of the protests. While a large proportion of activists engage in marches and other peaceful forms of protest, there have also been fringe elements that use more violent forms of demonstration, including arson. The presence of violent elements has usually been the most likely to be covered by media. This has caused the human rights message of the protests to be lost in sensational action and media coverage.

77. This is what happened, for instance, during anti-globalization demonstrations surrounding the Group of Eight Summit in Genoa, Italy, in July 2001. While the vast majority protested peacefully, some demonstrations degenerated into violence which caught most of the media attention. By the end of the Summit, hundreds of people had been injured, several hundred detained, and law enforcement officers had assaulted and beaten protesters; some protesters were not allowed to enter Italy and proceed to Genoa.[28] Investigations are still under way to ascertain responsibilities in the excessive use of force.

78. The Special Representative sent several communications that can be associated to protests by the anti-globalization movement. They concerned demonstrations that took place, or were meant to take place, in the context of the Asia-Pacific Economic Cooperation Summit (Bangkok, October 2003), the World Trade Organization Ministerial Meeting (Hong Kong, December 2005), the World Bank/International

[28] Amnesty International, *Report 2002*, available at http://web.amnesty.org/report2002/eur/italy/Open.

Monetary Fund meetings (Singapore, September 2006), or were against the signature of the Free Trade Agreement (*Tratado de Libre Comercio*) in Latin America.[29]

F. Protests linked to elections

79. The Special Representative sent 12 communications to seven countries[30] on protests related to elections. Protests concerned calls for free and fair elections, challenged the results of elections, denounced irregular nomination and registration procedures of candidates, or alleged violations of electoral regulations.

80. Violent means such as tear gas, rubber-coated metal bullets and stun grenades were frequently used to disperse these gatherings. In most of these cases defenders were allegedly arbitrarily detained or arrested. Arrests were often accompanied by violence, and a large number of those arrested were ill-treated. In many of the cases defenders were never brought to trial, but merely released on bail after a certain amount of time, or detained without having their case brought before a judge.

81. In Belarus, protests following the 2006 March elections resulted in mass arrests of peaceful demonstrators calling for free and fair elections. Members of the police violently disrupted the demonstration, and 300 to 400 people were detained, including 45 minors and three journalists. Some of the defenders were sentenced to 15 days' imprisonment. The minors and others were beaten by the police and ill-treated when detained. Reportedly, over 150 persons were speedily tried without having had access to a lawyer and grave concerns were expressed regarding the violation of their right to a fair trial. A large number of demonstrators were said to have been students who could face expulsion from the university for having participated in the demonstrations (see A/HRC/C/37/Add.1, paras. 56 and 74).

82. The Special Representative is concerned that restrictions on the right to protest in connection with elections can challenge the integrity of elections, which constitute a central foundation of democracies. The enjoyment of freedom of assembly and expression is fundamental and instrumental to ensuring free and fair elections.

G. Peace demonstrations

83. "Restrictions imposed on freedom of assembly have been liberally applied to prohibit or disrupt peaceful human rights assemblies, frequently on the pretext of maintenance of public order, and increasingly relying on counter-terrorism legislation, arguments and mechanisms", wrote the Special Representative in 2003 (A/58/380, para. 25). Anti-terrorism measures used as pretext to restrict the right to protest and freedom of assembly particularly affected peace demonstrations after 11 September. Government surveillance of activities of anti-war and peace groups increased tremendously, affecting the enjoyment of the right to protest.[31]

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[29] These communications were sent to the following countries: China, Colombia, Ecuador, Indonesia and Thailand.

[30] Bangladesh, Belarus, Chad, Ethiopia, Kyrgyzstan, Nepal and Zimbabwe.

[31] American Civil Liberties Union, Selected cases in defence of the right to freedom of speech and assembly, submission for the consideration of the Special Representative, July 2007.

84. The Special Representative sent communications on allegations of violent disruption of peace demonstrations to six countries.[32] In several of these cases, demonstrations were against the war in Iraq and the political decisions of the United States administration.

85. The Special Representative is concerned that arrests of protesters in the context of these demonstrations appear to have been based on the detainees' known or alleged affiliation with organizations critical of government policies rather than on evidence supporting the criminal charges eventually brought against them.

H. Protests linked to land rights and environmental claims

86. The Special Representative issued two press releases[33] and sent some 25 cases to 15 countries[34] regarding human rights defenders engaged in protests over land rights or environmental claims. The regions concerned by this kind of protests are Latin America and Asia. The highest number of communications on protests related to environmental issues and land rights were sent to China and Brazil.

87. As the Special Representative pointed out in her report to the Human Rights Council, "land rights and natural resources is an area where a large part of the defenders come from indigenous populations and minority groups. These populations are often working to secure their right to utilize and live on the land they consider to be theirs" (A/HRC/4/37, para. 41). Communications sent included cases of arrests, detentions, threats and, in some cases, killings of human rights defenders protesting over environmental issues and land rights.

88. In the report on her visit to Brazil, the Special Representative pointed out that violence against defenders "is committed in order to punish the leaders for their protest against illegal acquisition of land, or for their support of landless poor people occupying vacant and non-productive land" (A/HRC/4/37/Add.2, para. 18). "Human rights defenders working for the preservation of the environment become even more vulnerable because of the remoteness of the areas in which they are active. It was reported that many defenders who denounce illegal logging and large-scale fishing and those working to preserve wildlife habitats in the Amazon region and in the south and north-east regions of the country face attacks and threats against their lives" (ibid., para. 23).

89. In 2004 the Special Representative sent several communications to the Government of Chile concerning the matriarchal leader of a Mapuche community. Both the defender and members of her family had been victims of physical attacks because of her work to defend the human rights of her community and for protesting against illegal logging. In May 2004, the Mapuche leader, who was pregnant, was allegedly beaten by policemen, causing her to miscarry. In August and October 2006, communications were sent concerning the arrest of her son who has been charged under "anti-terrorism" legislation (see E/CN.4/2005/101/Add.1, paras. 104,

[32] Brazil, Egypt, Indonesia, Pakistan, the Russian Federation and the United States of America.

[33] Press release on the situation in Bolivia issued on 16 October 2003 and press release on the dam on the Narmada River in India issued on 13 April 2006.

[34] Bolivia, Brazil, Cambodia, Chile, China, Colombia, Ecuador, Guatemala, India, Mexico, Pakistan, Republic of Korea, Thailand, Viet Nam and Zimbabwe.

105 and 107; E/CN.4/2006/95/Add.1, paras. 76-78; and A/HRC/4/37/Add.1, paras. 125-127 and 136 and 137).

90. The criminalization of social movements working on land rights and environmental issues is another concern pointed out by the Special Representative on previous occasions, when she stated that "farmers have been prosecuted in anti-terrorist courts for protesting attempts by State security forces to evict them from land. Villagers demonstrating against mega-projects that threaten their environment and livelihood have been charged with conducting anti-State activities" (A/58/380, para. 25; see also A/HRC/4/37/Add.2, paras. 36-42).

I. Monitoring and reporting on demonstrations

91. Monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. This is a valuable contribution to the effective enjoyment of the right to peaceful assembly. The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly.[35]

92. A positive experience in that respect has been the thorough monitoring role performed by the Office of the High Commissioner for Human Rights (OHCHR) during the April 2006 protests in Nepal. The OHCHR monitoring role has been acknowledged as fundamental in containing human rights violations and in documenting those that occurred for accountability purposes.[36]

93. Journalists as well have an important role to play in providing independent coverage of demonstrations and protests. Assemblies, parades and gatherings are often the only means that those without access to the media may have to bring their grievances to the attention of the public. Media footage also provides an important element of accountability both for organizers of events and law enforcement officials. The media must therefore have access to assemblies and the policing operations mounted to facilitate them.[37]

94. Since 2001, the Special Representative has sent 17 urgent appeals regarding violations affecting human rights defenders that investigate, document or report on protests and demonstrations. Communications and press releases have been issued on cases that occurred in 12 countries.[38] Human rights monitors and journalists have had their cameras confiscated, been arrested, received death threats, and in some cases killed while covering demonstrations.

95. In the report on her mission to Israel and the Occupied Palestinian Territory, the Special Representative referred to the arrest of journalists covering peaceful protests against the violation of Palestinian rights resulting from construction of the

[35] OSCE/ODHIR, op. cit., p. 73.

[36] Office of the High Commissioner for Human Rights, *The April protests: democratic rights and the excessive use of force, Findings of OHCHR Nepal's monitoring and investigations*, Kathmandu, September 2006.

[37] OSCE/ODHIR, op. cit., p. 75.

[38] Argentina, Azerbaijan, Bangladesh, Belarus, China, Ethiopia, Israel, Maldives, Nepal, Pakistan, United States of America and Zimbabwe.

wall. "Video footage shot by journalists has been instrumental in providing evidence to the courts that such demonstrations have been peaceful" (E/CN.4/2006/95/Add.3, para. 53).

IV. Conclusions and recommendations

96. The right to protest is a fully fledged right and entails the enjoyment of a set of rights internationally recognized and reiterated in the Declaration on Human Rights Defenders. These rights include freedom of expression and opinion, freedom of association, freedom of peaceful assembly and trade union rights, including the right to strike.

97. Protecting the right to protest in the context of freedom of assembly entails both negative and positive obligations. The negative obligation on the part of the State not to interfere with peaceful protests is to be combined with the positive obligation to protect rights holders in the exercise of this right, particularly when persons protesting hold unpopular or controversial views, or belong to minorities or other groups exposed to higher risks of victimization, attacks and other forms of intolerance.

98. Judiciaries have a particular role in the protection of the right to protest through interpretation and application of national laws that are conducive to the realization of the right to freedom of assembly, and by ensuring that human rights defenders are not penalized for using this right for the promotion and protection of human rights.

99. In addition to the legal obligations related to freedom of peaceful assembly, freedom of expression, freedom of association and trade union rights, including the right to strike, the Special Representative argues that respecting and fulfilling the right to protest entails the obligation on the part of States to take deliberate, concrete and targeted steps to build, maintain and strengthen pluralism, tolerance and an open attitude to the expression of dissent in society.

100. States should enforce a code of conduct on law enforcement officials, particularly with regard to crowd control and the use of force, and ensure that the legal framework contains effective provisions for the oversight and accountability of officials especially with regard to their responses to public protest actions.

101. In particular, States should take adequate measures to address the protection gaps identified in this report with respect to the different types of protests analysed and the role of defenders therein. To achieve this the following measures are recommended:

(a) On women defenders in demonstrations:

(i) Investigate and prosecute instances of gender-based violence against women defenders occurring during demonstrations as a matter of priority. It is important to give no-tolerance signals on gender-based violence. This helps to accelerate changes in attitudes and behaviours in sectors of society hostile to women's rights;

(ii) Train and instruct law enforcement officials on protection measures to be taken with regard to children taking part in demonstrations with their mothers;

(b) On student protests: take steps to create a conducive environment that allows children and young adults to associate and express views on matters affecting them as well as on broader human rights issues. Student protests have a high educational value as they are among the first experiences of public participation and human rights defence of students. Ensuring a conducive environment for student protests is a social investment in addition to a legal obligation;

(c) On trade unionists, protests over workers' rights and the right to strike:

(i) Review restrictive legislation on the right to strike, including provisions with too-broad definitions of essential services that restrict or prevent strikes by vast sectors of civil servants;

(ii) Acknowledge trade unionists as human rights defenders entitled to the rights and protection set out in the Declaration on Human Rights Defenders;

(d) Demonstrations on LGBT rights:

(i) Take adequate measures to hold accountable officials and authorities taking unlawful decisions banning demonstrations;

(ii) Ensure the protection of participants in gay pride parades before, during and after marches from acts of violence and intolerance by counter-protestors;

(iii) Train law enforcement officials on appropriate conduct, particularly as it relates to the implementation of the non-discrimination principle and respect of diversity;

(e) On peace demonstrations: ensure that anti-terrorism legislation and measures are not applied against human rights defenders to prevent their human rights work. On this point, the Special Representative reiterates the recommendations contained in her report to the Assembly in 2003 on the impact of security legislation on human rights defenders (see A/58/380, paras. 70-74);

(f) On the monitoring role of defenders and journalists during demonstrations:

(i) Allow human rights defenders to operate freely in the context of freedom of assembly to enable them to perform their monitoring role;

(ii) Grant media access to assemblies to facilitate independent coverage. The Special Representative recommends that media report on the human rights aspects of protests and seek the information and collaboration of human rights defenders for this purpose.

102. The Special Representative is of the view that the peaceful and constructive expression of dissent prevents the eruption of conflict and violence. Human rights defenders play a pivotal role in ensuring that protest and

criticism are expressed in a peaceful and constructive manner. The Special Representative recommends that States legitimize and empower human rights defenders in this role and encourages defenders to take full ownership of this role.

103. The role of international and regional monitoring mechanisms is fundamental both to develop the notion and understanding of the right to protest in all its facets as well as to protect rights holders, including human rights defenders, in their entitlements. The Special Representative encourages international and regional mechanisms to continue monitoring the right to protest and interpret it in a progressive way that responds to present-day reality.

104. The present report illustrates how international and regional human rights systems and mechanisms complement and mutually reinforce each other in monitoring and protecting the right to protest. The Special Representative encourages international and regional mechanisms to strengthen cooperation initiatives among mechanisms to further cross-fertilization.

105. The Special Representative recommends using and adapting to national and regional contexts the OSCE/ODHIR Guidelines on Freedom of Assembly.

106. The Special Representative considers valid and reiterates the recommendations made in her report on freedom of assembly in relation to the activities of human rights defenders (see A/61/312, paras. 92-101).

107. Finally, the Special Representative encourages defenders and other interested actors to fully explore the "promotional" aspect of the right to protest by collecting and disseminating achievements and lessons learned on the implementation of the right to protest. Documenting the positive impact of a constructive and peaceful expression of dissent will help to soften restrictive positions and attitudes on the right to protest in our societies.